

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

MARIANNE DIALOGO,

Plaintiff/Counter-defendant,

vs.

Case No. 2005-3163-CZ

ISABELLE TCRUZ, NOLI TCRUZ,  
NOEL TCRUZ, MARY ANN CENIZA,  
and MAXICARE HOME HEALTH  
AGENCY, INC., a Michigan corporation,

Defendants/Counter-plaintiffs.

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OPINION AND ORDER

Plaintiff has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Defendants have filed a response seeking denial of the motion.

Plaintiff filed this action on August 8, 2005. Plaintiff asserted in her complaint that in October 2003 she emigrated from the Philippines and signed an employment contract with defendant Maxicare Home Health Agency, Inc. ("Maxicare"). Defendant Isabelle Tcruz ("Isabelle Tcruz") owned Maxicare and was plaintiff's aunt by marriage.<sup>1</sup> Plaintiff claims on May 7, 2005 defendants took physical custody of plaintiff until May 10, 2005 and attempted to force her to board a plane to the Philippines. Plaintiff now seeks damages for count I, false imprisonment, count II, intentional infliction of emotional distress, and count III vicarious

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<sup>1</sup> Defendant Noli Tcruz ("Noli Tcruz") is married to Isabelle Tcruz. Defendant Mary Ann Ceniza ("Cenzia") is employed by Affinity Home Care, which is owned by Noli Tcruz.



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liability of defendant Maxicare.<sup>2</sup> Defendant Isabelle Teruz and Maxicare filed a counter-complaint on September 16, 2005 alleging breach of contract.

Plaintiff has motioned for summary disposition pursuant to MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual support for a claim. In reviewing such a motion, the court will consider affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Smith v Globe Life Insurance Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is (1) no genuine issue in respect to any material fact and (2) the moving party is entitled to judgment as a matter of law. *Smith, supra*. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 446.

Plaintiff argues defendants fail to deny her claims. According to plaintiff, deposition testimony supplied by defendants supports her claims of false imprisonment, intentional infliction of emotional distress, vicarious liability, and breach of contract, therefore summary disposition in her favor is appropriate. In response defendants contend their deposition testimony contradicts plaintiff's claims. Defendants insist a question of material fact is presented by the testimony and summary disposition is not warranted.

The Court will begin its review with plaintiff's claim for false imprisonment. False imprisonment is an unlawful restraint of an individual's personal liberty. *Moore v City of*

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<sup>2</sup> The Court has granted plaintiff leave to amend her complaint but she has failed to file an amended complaint. Both parties have addressed plaintiff's additional claim of breach of contract and the Court will address this matter for purposes of this motion.

*Detroit*, 252 Mich App 384, 387; 652 NW2d 688 (2002). The elements of false imprisonment are (1) an act committed with the intention of confining another, (2) the act directly or indirectly results in confinement, and (3) the person confined is conscious of her confinement. *Id.* Brief confinements or restraints are insufficient to establish false imprisonment. *Id.* at 388.

Here, the record consists of deposition testimony of the parties. Defendants argue plaintiff voluntarily came to the Tcruz home, was able to freely leave, communicated with friends and family, and voluntarily boarded the plane to Los Angeles. The evidence demonstrates from May 7-10, 2005 the parties were discussing plaintiff's marriage and plaintiff was frequently in the Tcruz home for these discussions. *See* Exhibit 1 of Plaintiff's brief in support of motion for summary disposition at 107, 128, 134-135, 154. Although plaintiff clearly felt confined by defendants, she also testified of several incidents, within the alleged confinement period, where she freely left the home, communicated with friends and family, and requested to return to the Philippines. *Id.* at 111, 120, 147-148, 153, 160-161, 229. Ceniza testified that no one guarded the doors and plaintiff requested to return to the Philippines. *See* Exhibit 4 of Plaintiff's brief in support of motion for summary disposition at 37-38, 51-52.

Further, deposition testimony of Isabelle Tcruz indicates plaintiff left the home freely, initially agreed to move into the Tcruz home, and subsequently decided to return to the Philippines. *See* Exhibit 2 of Plaintiff's brief in support of motion for summary disposition at 49-50, 56-57. According to Isabelle Tcruz, in the evening of May 8, 2005 plaintiff decided she no longer wanted to return to the Philippines, but at that time arrangements for her departure were completed. *Id.* at 73. The record establishes a genuine issue material fact as to whether defendants intended to confine plaintiff and whether their actions directly or indirectly resulted in her confinement, therefore summary disposition is not available.

The Court will now turn to plaintiff's claim of intentional infliction of emotional distress. To recover damages for intentional infliction of emotional distress requires extreme and outrageous conduct, intent or recklessness, causation, and severe emotional distress. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 602; 374 NW2d 905 (1985); *VanVorous v Burmeister*, 262 Mich App 467, 481; 687 NW2d 132 (2004). Liability for intentional or reckless infliction of emotional distress attaches only when a plaintiff can demonstrate that the defendant's conduct is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. *Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003).

In this case, defendants contend plaintiff failed to demonstrate their actions were intentional or rise to the level of outrageous and extreme conduct. Again, the parties rely primarily upon deposition testimony. Upon examination of plaintiff's and defendants' depositions there are significant discrepancies concerning the events that occurred beginning May 6, 2005. Plaintiff testified that she was guarded, forced to stay at the Teruz home, and required to return to the Philippines against her will. See Exhibit 1 of Plaintiff's brief in support of motion for summary disposition at 11, 14, 134-135, 157, 167-168, 228-230. Defendants testimony demonstrates she was not guarded, she requested to return home, and she was able to freely leave the Teruz home. See Exhibit 2 of Plaintiff's brief in support of motion for summary disposition at 49-50, 57, 61; Exhibit 4 at 27, 37-38, 44, 51-52. Reasonable minds may differ on whether defendants conduct is so extreme and outrageous to impose liability. *Lewis, supra*. Further, a question of fact is demonstrated regarding defendants intention. Accordingly, based on the deposition testimony, a genuine issue of material fact exists.

Next the Court will consider plaintiff's claim of vicarious liability. An employer is responsible for the wrongful acts committed by its employee while performing a duty within the scope of employment. *Rogers v JB Hunt Transport, Inc*, 466 Mich 645, 651-652; 649 NW2d 23 (2002). An employer is not liable for torts intentionally or recklessly committed by an employee beyond the scope of his employer's business. *Id.*

Here, the record demonstrates, at least in part, actions by defendants were to benefit Maxicare. The employment contract contained a clause that provided plaintiff would return to the Philippines upon breach. See Exhibit 11 of Plaintiff's brief in support of motion for summary disposition. The testimony of Isabelle Teruz indicates plaintiff quit employment with Maxicare and chose to return to the Philippines. See Exhibit 2 of Plaintiff's brief in support of motion for summary disposition at 61, 108. The record indicates defendants were personally motivated due to plaintiff's potential divorce and may have exceeded their scope of employment. See Exhibit 1 of Plaintiff's brief in support of motion for summary disposition at 33-34, 87-88, 108-110, 136-139. Due to evidence that the individual defendants exceeded the scope of their employment and a genuine issue of material fact whether the individual defendants intentionally committed any torts, summary disposition of the claim of vicarious liability is not demonstrated.

The Court will now turn to plaintiff's claim of breach of contract. The essential elements of a valid contract are (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation. *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). It is necessary that there be a meeting of the minds on all essential terms to form a binding contract. *Kamalnath v Mercy Hosp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). Mutual assent is required to waive or modify a contract. *Quality*



*Products and Concepts Co v Nagel Precision, Inc.*, 469 Mich 362, 364; 666 NW2d 251 (2003).

Mutuality is demonstrated by clear and convincing evidence. *Id.* at 365.

In the present matter, plaintiff admits all the documents necessary to determine her claim of breach of contract have not been produced. There is insufficient documentary evidence presented at this time for the Court to determine whether a breach of contract was committed. As a result, summary disposition of plaintiff's breach of contract claim is inappropriate.

For the reasons set forth above, plaintiff's motion for summary disposition is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Dated: September 6, 2006

DONALD G. MILLER  
Circuit Court Judge

CC: James C. Steffl  
Edward L. Ewald, Jr.

DONALD G. MILLER  
CIRCUIT JUDGE

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